

PROPOSED CHANGES TO "INDUCEMENT" LAW
201 KAR 11:011 & 201 KAR 11:121

The Kentucky Real Estate Commission met on September 23, 2004 at the Holiday Inn University Park in Bowling Green, Kentucky. The Commission reviewed a memorandum from Lee Harris, General Counsel, Kentucky Real Estate Commission and Glenn Acree, General Counsel, Kentucky Association of Realtors®. The memorandum stated two proposals which came out of the Inducement Task Force Committee. The Commission unanimously approved Proposal #1. However, the motion was amended to clarify the language of Proposal #1. The following is a draft of that clarification, which will be reviewed at the November 18, 2004 Commission meeting:

PROPOSAL ONE:

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

Section 1. Definitions.

(1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.

(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

(3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS [324.117](#)(1) because the advertisement:

(a) Is contrary to fact;

(b) Leads a person to a mistaken belief or conclusion; or

(c) Knowingly made a representation that is contrary to fact.

(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:

(a) Is:

1. Known to be false; or

2. Made recklessly;

(b) Is made to induce an act;

(c) Induces an act in reliance on the misrepresentation; and

(d) Causes injury.

(5) ~~"Prize" means an item of value that is:~~

~~(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and~~

~~(b) Not a complimentary:~~

~~1. Refreshment, including a soft drink or snack, that is offered to the general public; or~~

~~2. Gift that:~~

~~a. Has a value less than \$100;~~

~~b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and~~

~~c. Was not offered prior to closing.~~

~~(6)~~ "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

201 KAR 11:121. Improper conduct.

Section 1. The following shall be improper for any licensed agent:

(1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

(2) To offer, ~~either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate or any other thing of value as an inducement.~~ through advertising, direct contact or by others, to the general public, as an inducement. Advertising includes any presentation or situation, other than one on one contact with a client or customer.

(3) It shall not be improper conduct to ~~disseminate information:~~

(a) Advertise ~~but~~ the fee or other compensation the licensed agent agrees to charge for his services; ~~or~~ and

(b) Advertise or distribute ~~but inducements~~ goods or services offered by ~~the licensed agent's client.~~ others; and

(c) Distribute marketing materials bearing the name or logo of the licensee or licensee's broker or company including but not limited to, matchbooks, magnets, pens, calculators, umbrellas, or calendars having a cost of not more than \$10 per item; and

(d) Pay for refreshments or the costs of meals consumed by clients, customers or prospective clients or customers; and

(e) Present any gift that does not exceed a cost of \$100 at or after closing to the participants in that closing; and

(f) Offer a prize or free gift at an event such as a fair, trade exposition, or community event so long as such advertising is done only at the specific event and the cost of the prize or free gift does not exceed \$500.00 per event per branch office; and

(g) Offer, in a one on one situation, to provide any thing of value for a client or customer, so long as it is disclosed in writing and signed by the licensee and his or her client or customer.